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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOSEPH P. ESPOSITO • Chief Deputy District Attorney
VICTORIA L. ADAMS • Assistant District Attorney

SCOTT K. GOODWIN • Director

January 9, 2019

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Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Michael Contreras
J.S.I.D. File #18-0180
L.A.S.D. File #018-05609-0560-057

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 8, 2018, non-fatal shooting of Michael Contreras by Los Angeles County Sheriff's Department Deputy Brandon Barr. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

Shannon Presby
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Brandon Barr #[redacted]

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MEMORANDUM

TO:	CAPTAIN CHRISTOPHER BERGNER Los Angeles County Sheriff's Department Homicide Bureau 1 Cupania Circle Monterey Park, California 91755
FROM:	JUSTICE SYSTEM INTEGRITY DIVISION Los Angeles County District Attorney's Office
SUBJECT:	Officer Involved Shooting of Michael Contreras J.S.I.D. File #18-0180 L.A.S.D. File #018-05609-0560-057
DATE:	January 9, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 8, 2018, non-fatal shooting of Michael Contreras. We have concluded that Los Angeles County Sheriff's Department (LASD) Deputy Brandon Barr acted lawfully in self-defense.

The District Attorney's Command Center was notified of the shooting on May 9, 2018 at 1:15 a.m. The District Attorney Response Team responded to the scene and was given a briefing of the circumstances of the shooting and a walk-through of the scene.

The following analysis is based on reports, recordings, photographs and surveillance video, submitted by LASD Homicide Detectives Chaffey Shepherd and Jonathan Bailey. The voluntary statement of Deputy Barr was considered for this analysis.

FACTUAL ANALYSIS

On May 8, 2018, at about 11:30 p.m., Michael Contreras was walking on Giovane Street in the City of El Monte. Contreras was alone and walking westbound on the sidewalk on the north side of the street. He was carrying a shoebox and wearing a small backpack.

Los Angeles County Sheriff's Department (LASD) Deputies Brandon Barr and Jaime Barrios were on patrol in south El Monte in separate, marked LASD patrol vehicles. Barr was traveling north on Seaman Avenue and Barrios trailed behind Barr. When Barr was passing Giovane Street, he looked to his left and saw Contreras on the sidewalk. Barr described the neighborhood in which he was patrolling as a "high crime" area which was home to gang members. Because of the time and area, he decided to stop and talk to Contreras. When he saw Contreras, he radioed to Barrios, told Barrios what he saw, and conducted a U-turn so he could contact Contreras on Giovane Street.

Barr pulled his patrol vehicle onto Giovane Street and used his vehicle's spotlight to illuminate Contreras. Barrios followed and parked his vehicle behind Barr's. When Barr illuminated Contreras, Contreras walked a few steps before stopping and turning toward Barr. Barr said,

"What's up?" to Contreras, and in response, Contreras lifted his shirt with his left hand and displayed an apparently black, semiautomatic handgun in his waistband. Barr responded by ordering Contreras to put his hands up, but Contreras grabbed the gun with his right hand and started pulling it from his waistband. When Contreras pulled out the gun, Barr fired one round from his service weapon, striking Contreras in his right side.

Barr spoke with investigators after the shooting. He said Contreras:

> Turned towards me and, using his left hand, his shirt went up and that's when I saw the butt of a black, semiautomatic pistol. And that's when I drew my firearm – pointed it at him – said, "Let me see your hands! Let me see your hands!" And then, using his right hand, he reached for it and pulled it out. As I seen it coming out towards me, that's when I fired one round.

Barr said when he saw the gun he said something to alert his partner. Barr could not remember whether he said, "Gun! Gun!" or "He's got something!" but he yelled out something before he shot.

Barrios also spoke with investigators. He stopped behind Barr's vehicle and saw Barr exit. Shortly after Barr exited his vehicle, Barr drew his service weapon and started yelling at Contreras to show his hands. Barrios exited his car and moved behind Barr's vehicle. When he did that, he saw Contreras facing Barr and saw Contreras' right hand move to his waistband before he heard Barr fire one round. Contreras was faced in such a way that Barrios could not see what Contreras was doing with his right hand when Barr shot.

Contreras also spoke with investigators after the shooting. He explained he had a BB gun tucked into his waistband when the deputies stopped him:

> I lifted my shirt and that's when the sheriff says, "He's reaching for something, reaching for something!" And I'm letting him know I'm reaching for this BB gun to show it to him. And I [unintelligible] my shirt, take it out, and throw it on the grass, just so I would be unarmed, you feel me?...So they wouldn't find me a threat…and that's when they opened fire.



Figure 1: A black BB gun shaped like a semiautomatic handgun was recovered from the scene.

A security camera mounted on a home near the shooting captured video of Contreras walking on the sidewalk just before he was stopped by the deputies. Although the camera did not capture video of the shooting, it did capture some audio. While much of the audio is difficult to discern, the stop apparently begins with Barr saying, "What's up?" before he starts yelling, "Hey! Put your fucking hands up or you're going to get shot! Hey!" and one gunshot is heard.

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others, and, if he is charged with a crime for that use of force, this is a "lawful excuse" which precludes a conviction for the crime. CALCRIM No. 3470. This defense is available if the person actually and reasonably believed that he or others were in imminent danger of bodily injury. Id.; *see also* People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 1082. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. A person is not required to retreat; he may stand his ground and defend himself even if safety could have been achieved by retreating. Id.

In this case, Contreras was walking alone at 11:30 p.m. in an area known to law enforcement as a high crime area. When Barr decided to stop to talk to Contreras, Contreras lifted his shirt to reveal an apparent semiautomatic handgun. When he did that, Barr yelled, "Put your fucking hands up, or you're going to get shot!" Instead of complying, Contreras reached into his waistband with his other hand and removed the apparent gun. In response, Barr shot him one time. Because Contreras removed the handgun from his waistband instead of putting his hands up as ordered, it was reasonable for Barr to believe Contreras posed an immediate, deadly threat. Therefore, Barr's use of deadly force to stop that threat was reasonable. Because Barr's belief was reasonable under the circumstances, it is immaterial that Contreras was armed with a replica firearm and not an actual gun.

CONCLUSION

Because it was reasonable to believe Contreras presented an immediate, deadly threat to Barr when he reached into his waistband to retrieve an apparent handgun after being ordered to put his hands up, we conclude that Deputy Barr was justified in using deadly force against him in self-defense. We are closing our file and will take no further action in this matter.